with the seal of the court impressed thereon. Plaintiff brought this action in the District Court of Texas on a promissory note. The citations issued to defendants were impressed with the seal of the County Court instead of the District Court, but the same individual was clerk of both courts. *Held,* citations issued out of the District Court impressed with the seal of the County Court were void and would not sustain a default judgment, *Hardy Oil Co. et al.* v. *Markham State Bank* (1910), — Tex. Civ. App. —, 131 S. W. 440.

The decisions in different states determining the effect to be given constitutional and statutory requirements as to the forms of writs and processes are quite divergent. Two doctrines concerning this question appear to have acquired a more or less permanent footing in the various courts. The doctrine in accordance with which the principal case was decided boasts of the support of many courts in this country. They in effect hold that statutes requiring all writs and processes to be authenticated by the seal of the court out of which they issue are mandatory and that writs or summons issued without a seal are void. *Dexter* v. *Cochran,* 17 Kan. 447; *Weaver* v. *Peasley,* 163 Ill. 251, 54 Am. St. Rep. 469. The summons or other process issued without a seal being void, an amendment thereof is necessarily impossible. *Sidwell* v. *Schumacher,* 99 Ill. 426. These courts would seem to hold that the issuance of a citation without a seal is a jurisdictional defect and therefore nullifies all subsequent proceedings, *Choate* v. *Spencer,* 13 Mont. 127, 40 Am. St. Rep. 425. It is assumed by those courts supporting the second doctrine that an omission of a seal is an omission of something relating to mere form, and that consequently the process is not rendered void but is merely voidable, *Brewer* v. *Sibley,* 13 Metc. 175, therefore they permit such voidable process to be amended by affixing the correct seal, *People* v. *Dunning,* 1 Wend. 16. Quite a number of the latter courts hold that on the failure of the defendant to object at the proper time and in the proper manner, as by plea in abatement or motion, he will be deemed to have waived the defect, *Ripley* v. *Warren,* 2 Pick. 591. Certainly an ordinary individual should not be condemned if he has not acquired such a refined sense of justice as will enable him to view with perfect equanimity the decision of the court wherein such formal and puerile considerations as the failure of a clerk to pick up the right seal and impress it on the summons are permitted to outweigh and defeat the substantial rights and equities of the litigant.

MASTER AND SERVANT—APPLIANCES—REASONABLE SAFETY.—Action for the death of a miner caused by a defective gear hoist. The trial court admitted evidence to show a common custom in the district of using hoists with certain appliances absent from the particular hoist, to be considered by the jury not as conclusive, but as an aid to determine whether the hoist was reasonably safe. *Held,* the evidence was properly admitted. *Rice* v. *Van Why* (1910), — Colo. —, 111 Pac. 599.

This case was twice before the Supreme Court of Colorado. The facts furnish a very good opportunity for the application of a doctrine, which is denied by some courts, viz. the determination of the nature or tendency of an

object, from its effect on the conduct of others. The numerical weight of authority permits such a determination. In addition to the cases cited in the principal case see: *Jones* v. *Malvern Lumber Co.*, 58 Ark. 125; *Burns* v. *Sennett*, 99 Cal. 363; *Taylor* v. *Star Coal Co.*, 110 Ia. 40; *McMahon* v. *McHale*, 174 Mass. 320; *Belleville Stone Co.* v. *Comben*, 61 N. J. L. 353; *McGar* v. *Worsted Mills*, 22 R. I. 347; *Fritz* v. *Tel. Co.*, 25 Utah 263; *Richmond* v. *Ford*, 94 Va. 627. For the opposite view see: *Hartford Deposit Co.* v. *Sollitt*, 172 Ill. 222; *Helfenstein* v. *Medart*, 136 Mo. 595. On principle the principal case seems sound. However, it must be remembered that such facts are allowed merely as evidence and not as a standard of conduct, because *everyone* in the same business might be negligent. *Maynard* v. *Buck*, 100 Mass. 40. Also the conduct of others must have occurred under similar circumstances. *Congdon* v. *Howe Scale Co.*, 66 Vt. 255. And the admission of such evidence should be in the trial court's discretion, in order to avoid a confusion of issues. *Hill Mfg. Co.* v. *P. & N. Y. Co.*, 125 Mass. 292; *McMahon* v. *McHale*, 174 Mass. 320.

MUNICIPAL CORPORATIONS—DEFECT IN STREET—ACTION FOR INJURIES—PARTIES LIABLE.—Plaintiff recovered judgment below against defendant Paving Company for personal injuries caused by falling off the edge of a sidewalk into a ditch. The sidewalk had been completed by the defendant Company in accordance with plans furnished by the city engineer and had been accepted by the engineer in charge of the improvement district three days previous to the accident. The evidence clearly showed an absence of reasonable precautions in respect to a guard-rail or lights. *Held*, judgment should be reversed and case dismissed. *Memphis Asphalt & Paving Co.* v. *Fleming* (1910), — Ark. —, 132 S. W. 222.

The general rule here applicable is that, after the contractor has turned the work over and it has been accepted by the proprietor, the contractor incurs no further liability to third parties by reason of the condition of the work; but the responsibility, if any, for maintaining or using it in its defective condition is shifted to the proprietor. *Fitzmaurice* v. *Fabian*, 147 Pa. St. 199, 23 Atl. 444; *First Presbyterian Cong.* v. *Smith*, 163 Pa. 561, 30 Atl. 279, 26 L. R. A. 504, 43 Am. St. Rep. 808; THOMPSON, NEGLIGENCE, § 686; *Daugherty* v. *Herzog*, 145 Ind. 255, 44 N. E. 457, 32 L. R. A. 837, 57 Am. St. Rep. 204; *Salliotte* v. *King Bridge Co.*, 122 Fed. 378, 58 C. C. A. 466, 65 L. R. A. 620. This rule is subject to some qualifications, among them the cases where the work is a nuisance per se, or where it is turned over by the contractor in a manner so negligently defective as to be imminently dangerous to third persons. Lord COLONSAY in *Daniel* v. *Metropolitan R. Co.*, L. R. 5 H. L. 63; *Bower* v. *Peate*, 1 Q. B. D. 321; *Pickard* v. *Smith*, 10 C. B. (N. S.) 470; *Norwalk Gas Light Co.* v. *Norwalk*, 63 Conn. 495, 28 Atl. 32. Cases where the thing was imminently dangerous are: *Thomas* v. *Winchester*, 6 N. Y. 397; *Coughtry* v. *Globe Woolen Co.*, 56 N. Y. 124. The court in discussing the principal case with respect to the qualifications above set forth says that the case does not come within them. No authority is cited to prove this statement and it might be difficult to appreciate its accuracy in view of the